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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/070,289	07/15/2002	Mengjun Cao	13935.1USWO	4609
23552	7590	03/10/2004	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			JACKSON, SUZETTE JAMIE	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 03/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/070,289	<b>Applicant(s)</b> CAO, MENGJUN	
	<b>Examiner</b> Jackson J Suzette	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 28 February 2002.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) 14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)<br>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)<br>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>6/6/02</u> . | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____<br>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)<br>6) <input type="checkbox"/> Other: _____ |
|--|--|

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## DETAILED ACTION

### *Oath/Declaration*

1. It has been noted that the term Polyacrylamide has been spelled "POTYACRYLAMIDE" on the Declaration. Appropriate corrections should be made.

### *Claim Objections*

2. The claims are objected to because they include reference characters which are not enclosed within parentheses. Reference characters corresponding to elements recited in the detailed description of the drawings and used in conjunction with the recitation of the same element or group of elements in the claims should be enclosed within parentheses so as to avoid confusion with other numbers or characters which may appear in the claims. See MPEP § 608.01(m).
3. Claim 14 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim should refer to other claims in the alternative only. See MPEP § 608.01(n). Accordingly, the claim 14 not been further treated on the merits.

### *Specification*

4. The disclosure is objected to because of the following informalities: The wording "*they touch*" on page 1, line 11 and "*It touches good*" in line 13 does not make grammatical sense. Appropriate correction is required.

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***Claim Rejections - 35 USC § 112***

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 7-13 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. Claim 7 recites the limitation "each 100ml..." and "the weight".... There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-3, 6-10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Purkait EP 0784987 A2. Purkait discloses the invention as claimed comprising: A mammary prosthesis with a round curved shell made of silicon (see fig. 1, col.3, line 31); polyacrylamide hydrogel filling (col. 3, line 47); including a acylamide; a cross-linking agent; cataylst and

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accelerator; N,N' -methylenebisacrylamide; (col. 7, lines 35-58, col. 8, lines 1-3); ammonium persulfate (col. 8, lines 15-16). However Purkait does not specify the percentages of the chemical ingredients. At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to make the prosthesis with the claimed percentages of chemicals, because applicant has not disclosed that utilizing these specific percentages of chemical reactants provides an advantage, is used for a particular purpose, or solve a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with either the combination as taught by Purkait because both applicant and Purkait disclose the same chemical ingredients and accordingly is deemed to be a design consideration which fails to patentably distinguish over Purkait.

10. Claim 4 rejected under 35 U.S.C. 103(a) as being unpatentable over Purkait EP 0784987A2 in view of Purkait 5,941,909 and further in view of Pinchuk et al. 5,376,117. Purkait EP 0784987 has been disclosed above however Purkait does not specify the use of sodium bisulphate as an accelerator or ethylenediamine. Purkait 5,941,909 teaches the use of sodium bisulphate (see col. 9, line 42). Pinchuk et al. teaches the use of ethylenediamine. It would have been obvious to one having ordinary skill in the art at the time the invention was made to utilize sodium bisulphate as taught by '909 or the ethylenediamine as taught by '117 with the invention of EP '987 because both teach mammary implants that are filled with cross-linked polyacrylamide gel and are well known for their use in polymer fillings for breast implants.

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*Conclusion*

11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Taylor 4,657,553; Rhee et al. 6,051,648 and Ward et al. 6,692,528 show related material.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Suzette J. Jackson whose work schedule is Monday-Friday 9-6:30 off every other Friday and whose telephone number is 703-308-6516.

13. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306.

14. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0858.



Suzette J. Jackson  
08 March 8, 2004